

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	01 C 268	DATE	8/4/2004
CASE TITLE	G.M. HARSTON CONSTRUCTION CO., INC. vs. THE CITY OF CHICAGO, et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

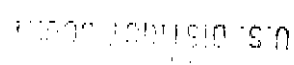
MOTION:

MEMORANDUM OPINION AND ORDER

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion And Order. Defendant Harston/Schwendener(HSVJ) motion to disqualify NCI as the City's expert or, in the alternative, to permit dual representation is denied.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	<div style="text-align: center;">  2004 AUG 11 - 901A 600Z </div>	number of notices	<div style="text-align: center;"> Document Number 121 </div>
<input type="checkbox"/> No notices required.		AUG 05 2004 date docketed	
<input type="checkbox"/> Notices mailed by judge's staff.		rbf docketing deputy initials	
<input type="checkbox"/> Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/> Mail AO 450 form.			
<input type="checkbox"/> Copy to judge/magistrate judge.			
LG	courtroom deputy's initials		
		Date/time received in central Clerk's Office	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
AUG 05 2004

G.M. HARSTON CONSTRUCTION CO.,
INC., and GLENN M. HARSTON,

Plaintiff,

v.

No. 01 C 0268

THE CITY OF CHICAGO, an ILLINOIS
municipal corporation, DAVID E. MALONE,
JUDITH RICE, RICHARD KINCZYK,
STAN KADERBEK, PAUL SPIELES,
HUGH MURPHY, JOHN KOSIBA, and
HARSTON/SCHWENDENER, a Joint Venture,

Defendants.

MEMORANDUM OPINION AND ORDER

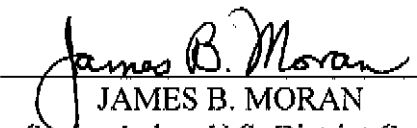
Harston/Schwendener, a Joint Venture (HSJV) talked to Navigant Consulting, Inc. (NCI) in June, 2003, about NCI providing expert services to HSJV in relation to this litigation. HSJV actually engaged NCI on July 30, 2003. In the meantime, on July 18, 2003, the City engaged Tucker Alan, Inc. as its expert. On January 30, 2004, NCI acquired substantially all the assets of Tucker Alan, thus creating a situation in which the experts for opposing parties were both from the same firm. HSJV proposed that there be a "Chinese wall," with dual representation, and NCI was amenable to that. The City was not. HSJV now moves to disqualify NCI as the City's expert or, in the alternative, to permit dual representation. That motion is denied.

There may well have been confidences shared by HSJV with NCI prior to the merger, but that relationship was just getting started when the conflict developed. We are mindful of the City's concerns: it is inherently difficult for two experts from the same firm to be as critical of

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each other and of the other's analysis as it would be for experts from different firms. And we are satisfied that NCI has maintained and can continue to maintain a separation from its engagement with the City those who had contact with HSJV and any information they may have received.

The City has already spent almost \$300,000 for expert services from the firm. The only downside to HSJV is that it will have to retain a different expert - but, as the court is somewhat painfully aware, an exploration of the merits is just now getting underway.



JAMES B. MORAN
Senior Judge, U.S. District Court

August 4, 2004